

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of)	
Station WTVE(TV), Channel 51)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	
CORPORATION)	File No. BPCT-940630KG
)	
For Construction Permit for a New)	
Television Station to Operate on)	
Channel 51, Reading, Pennsylvania)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Magalie Roman Salas, Secretary
for direction to
The Honorable Richard L. Sippel
Administrative Law Judge

**OPPOSITION OF ADAMS COMMUNICATIONS CORPORATION
TO "REQUEST FOR PERMISSION TO APPEAL"**

1. Adams Communications Corporation ("Adams") hereby opposes the "Request for Permission to Appeal" filed by Reading Broadcasting, Inc. ("RBI"). By *Order*, FCC 99M-66, released October 27, 1999, the Presiding Judge invited Adams and the Mass Media Bureau ("Bureau") to respond to RBI's Request.

2. RBI's Request must be rejected because RBI has failed to make an essential showing required by the rules. Section 1.301(b) of the Commission's rules specifically requires that a party seeking leave to appeal demonstrate that the alleged error "would be

likely to require remand should the appeal be deferred and raised as an exception." RBI itself includes that requirement in its quotation of the rule (at page 2 of the Request), but RBI thereafter ignores that requirement entirely.

3. Presumably, RBI omitted further reference to that requirement because RBI cannot satisfy that requirement. In the portion of the Presiding Judge's ruling at issue, the Presiding Judge added an issue directed against RBI. Even if, for the sake of argument, that action were ultimately deemed wrong, no remand would be required under any circumstance. The addition and trial of an issue will simply lead to the development of an evidentiary record with respect to that issue. If an appellate body at some later time were to determine that the addition of the issue had been erroneous, then that portion of the evidentiary record could simply be disregarded. No remand would be necessary.

4. Because RBI has failed to satisfy a showing specifically required by the applicable rule, its Request must be denied. The purpose of Section 1.301(b) is to avoid the delays which would occur if proceedings were interrupted every time a party happened to be dissatisfied with an ALJ's ruling on an interlocutory matter, particularly if the alleged error would not ultimately necessitate a remand. *E.g., Carmel Broadcasting Limited Partnership*, 6 FCC Rcd 3287 (1991). Here, RBI has failed even to claim that it could satisfy the standard specified in the Commission's rules with respect to interlocutory appeals. That being the case, RBI's Request must be rejected, and RBI must proceed to litigate the designate issue and take advantage of the ample opportunities in the ordinary hearing processes. *See, e.g., Columbia Broadcasting Corp.*, 48 RR2d 1187, 1189 (1981).

5. Because of the obvious and fatal flaw in the Request, Adams is reluctant to

dignify the remainder of the Request with any extensive discussion. RBI's Request amounts to nothing more than a petition for reconsideration in which it re-argues points which it has already twice presented to the Court (first, in its Opposition to Adams's Motion to Enlarge, and second, in its Opposition to Adams's Request for Leave to Appeal). Some points raised by RBI should, however, be addressed.

6. RBI claims that the Bureau is "merely speculating" about the adequacy of Mr. Parker's disclosure of information in his earlier applications. RBI Request at 4-5. But the Bureau is the forum to which those applications were submitted and which did, in fact, process those applications. Bureau counsel, speaking on behalf of the Bureau, is certainly qualified to address the adequacy of the contents of those applications, particularly when those contents are viewed in the more complete context which Mr. Parker conveniently omitted from his applications.

7. Similarly, RBI's suggestion that the Bureau could and should have been more than a "casual reader" of Mr. Parker's applications, RBI Request at n. 1, is flawed. For more than 50 years, it has been fundamental Commission law that, as a federal agency charged with regulation of thousands of entities comprising the nation-wide communications industries, the Commission can and must rely on the complete honesty and candor of its regulatees. *See FCC v. WOKO, Inc.*, 329 U.S. 223 (1946). The Commission's processing staffs cannot be expected to examine under a microscope each and every representation placed before it, searching for any possible omissions or inaccuracies. Rather, it is the applicant's job to provide all relevant information in a full and forthright manner. Where, as here, an applicant has chosen to tell the Commission significantly less than the whole story

about the applicant's history, and has apparently made affirmative efforts to direct the Commission away from that whole story, inquiry into the applicant's conduct is important to maintain the integrity of the Commission's regulatory processes.

8. RBI also repeatedly claims that no "intent to deceive" has been shown. RBI Request at 5-9. But intent can be inferred from facts and circumstances. *E.g.*, *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991). Here, the carefully crafted non-disclosures offered by Parker, when contrasted with the actual facts, provide ample basis for an inference of an intent to withhold potentially damaging information. This is especially so in view of the fact that, for example, Mr. Parker's own history before the Commission demonstrates that he was aware of the importance of obtaining favorable resolution of disqualifying issues against him. *See* Adams Request for Leave to Appeal at n. 6. His obvious effort to withhold disclosure of the fact that a disqualifying issue concerning him had been *unfavorably* resolved, viewed from that perspective, also supports an inference of intent.

9. RBI also relies on the claim that Mr. Parker's references to the *Mt. Baker* and *Religious Broadcasting* decisions are indicative of a lack of intent. RBI Request at 9. That might arguably have been so had Mr. Parker done nothing but cite those decisions correctly, without additional characterization. But Mr. Parker did not provide easily searchable citations, and he went out of his way to make the decisions themselves appear to be non-controversial and irrelevant to his basic qualifications. Again, the facts and circumstances

clearly support an inference of improper intent. ^{1/}

10. In this same connection, RBI repeatedly asserts that Mr. Parker was not the subject of a disqualifying issue in *Religious Broadcasting* because the Review Board supposedly only denied the Parker-controlled applicant integration credit. RBI Request at 9-10. But that mischaracterization is not supported by the decisions in *Religious Broadcasting*. There, the Presiding ALJ added a *disqualifying* issue against the Parker applicant and resolved that *disqualifying* issue *against* that applicant *because of Mr. Parker's misconduct*. 2 FCC Rcd 6561. On exceptions to the Initial Decision, the Review Board specifically and expressly stated that it "adopt[ed] the ALJ's findings and conclusions, except as modified herein". 3 FCC Rcd at 4085, ¶1. Nothing in the Review Board's decision even suggests, much less specifically states ^{2/}, that the Board intended to modify in any respect the adverse findings and conclusions concerning the disqualification of the Parker applicant. As a result, RBI's mantra-like invocation of the notion that *Religious Broadcasting* really did not involve a disqualifying issue is simply wrong.

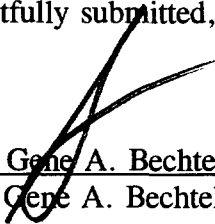
11. Finally, RBI argues that the added issue has somehow already been considered and, perhaps, resolved. RBI Request at 11-12. If RBI were correct in that claim, then RBI

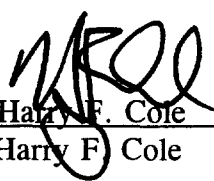
^{1/} Of course, at this stage of the proceeding it is not necessary to establish conclusively that Mr. Parker in fact intended to engage in misrepresentation or lack of candor. Establishing "intent" is one element of the hearing process with respect to the added issue. All that is necessary at this stage is to establish that a substantial and material question exists concerning his conduct (including the intent underlying that conduct). That benchmark has been easily met here.

^{2/} When the Review Board determined that some modification was warranted, it explicitly said so. See *Religious Broadcasting*, ¶11 (Board disagrees with ALJ on a point unrelated to Parker's applicant and states "the I.D. is reversed in that respect.")

would cite the Presiding Judge to a decision affirmatively so holding. RBI offers no such citation, because this issue has not been addressed or resolved previously.

Respectfully submitted,


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November 3, 1999


CERTIFICATE OF SERVICE

I hereby certify that, on this 3rd day of November, 1999, I caused copies of the foregoing "Opposition of Adams Communications Corporation to 'Request for Permission to Appeal'" to be hand delivered (as indicated below), addressed to the following:

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